

Amendment No. 1 to SB0395

Tracy
Signature of Sponsor

AMEND Senate Bill No. 395*

House Bill No. 511

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 54, Chapter 5, Part 1, is amended by adding the following language as a new, appropriately designated section:

Section 54-5-1__.

(a) In a civil action for the death of or injury to a person, or for damage to property, against the department of transportation or its agents, consultants, or contractors for work performed on a highway, road, street, bridge, or other transportation facility when the death, injury, or damage resulted from a motor vehicle crash within a construction zone in which the driver of at least one (1) of the vehicles was under the influence of any intoxicant, marijuana, narcotic drug, or drug producing stimulating effects on the central nervous system, or the alcohol concentration in such person's blood or breath was eight-hundredths of one percent (.08%) or more in violation of §§ 55-10-401 through 55-10-404, or any such driver was convicted of reckless driving in violation of § 55-10-205, it is presumed that the operation of the motor vehicle by any such driver who was in violation of such section or sections was the sole proximate cause of such driver's own death, injury, or damage. This presumption can be overcome if the gross negligence or intentional misconduct of the department of transportation, or

of its agents, consultants, or contractors, was a proximate cause of such driver's death, injury, or damage.

(b)

(1) A contractor who constructs, maintains, or repairs a highway, road, street, bridge, or other transportation facility for the department of transportation is not liable to a claimant for personal injury, property damage, or death arising from the performance of such construction, maintenance, or repair if, at the time of the personal injury, property damage, or death, the contractor was in compliance with contract documents material to the condition that was the proximate cause of the personal injury, property damage, or death.

(2) The limitation on liability contained in this subsection does not apply when the proximate cause of the personal injury, property damage, or death is a latent condition, defect, error, or omission that was created by the contractor and not a defect, error, or omission in the contract documents; or when the proximate cause of the personal injury, property damage, or death was the contractor's failure to perform, update, or comply with the maintenance of traffic safety plan as required by the contract documents.

(3) The contractor has a duty to provide the department of transportation with written notice of any apparent error or omission in the contract documents, and nothing in this subsection shall be interpreted or construed as relieving the contractor of any obligation to provide the department of transportation with written notice of any apparent error or omission in the contract documents.

(4) Nothing in this subsection shall be interpreted or construed to alter or affect any claim of the department of transportation against such contractor.

(5) This subsection does not affect any claim of any entity against such contractor, which claim is associated with such entity's facilities on or in department of transportation roads or other transportation facilities.

(c)

(1) In all cases involving personal injury, property damage, or death, a person or entity who contracts to prepare or provide engineering plans for the construction or repair of a highway, road, street, bridge, or other transportation facility for the department of transportation shall be presumed to have prepared such engineering plans using the degree of care and skill ordinarily exercised by other engineers in the field under similar conditions and in similar localities and with due regard for acceptable engineering standards and principles if the engineering plans conformed to the department of transportation's design standards material to the condition or defect that was the proximate cause of the personal injury, property damage, or death.

(2) This presumption can be overcome only upon a showing of the person's or entity's gross negligence in the preparation of the engineering plans and shall not be interpreted or construed to alter or affect any claim of the department of transportation against such person or entity.

(3) The limitation on liability contained in this subsection shall not apply to any hidden or undiscoverable condition created by the engineer.

(4) This subsection does not affect any claim of any entity against such engineer or engineering firm, which claim is associated with such entity's facilities on or in department of transportation roads or other transportation facilities.

(5) The engineer has a duty to provide the department of transportation with written notice of any apparent error or omission in the department of transportation's design standards, and nothing in this subsection shall be interpreted or construed as relieving the engineer of any obligation to provide the department of transportation with written notice of any apparent error or omission in the department of transportation's design standards.

(6) Nothing in this subsection shall be interpreted or construed to alter or affect any claim the department of transportation has against such engineer.

(d) In any civil action for death, injury, or damages against the department of transportation or its agents, consultants, engineers, or contractors for work performed on a highway, road, street, bridge, or other transportation facility, if the department, its agents, consultants, engineers, or contractors are immune from liability pursuant to this section or are not parties to the litigation, they may not be named on the jury verdict form or be found to be at fault or responsible for the injury, death, or damage that gave rise to the damages.

SECTION 2. This act shall take effect July 1, 2011, the public welfare requiring it, and shall apply to all contracts to which this act applies entered into, or injuries to which this act applies occurring, on or after the effective date of this act.